IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

CRP.No. 937 of 2005()

CMA.94/2004 of ADDL.DISTRICT COURT, THRISSUR
OS.565/1995 of I ADDL.SUB COURT, THRISSUR
(IA. 1835 /2002)

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REVN. PETITIONER: APPELLANT/PETITIONER PLAINTIFF.

PRINCE COTTAGE, ADVOCATE, AGED 51 YEARS,
S/O.GEORGE, KANAKAPADAN HOUSE, MOOSPET ROAD,
THRISSUR 5, CHEMBUKKAVU VILLAGE, THRISSUR TALUK,
AND DISTRICT.

BY ADV. SRI.JIJO PAUL

RESPONDENTS:

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1. THE STATE OF KERALA, REPRESENTED BY
THE CHIEF SECRETARY, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE SECRETARY, DEPARTMENT OF LAW,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

3. THE DISTRICT COLLECTOR,
CIVIL LANE, AYYANTHOLE, THRISSUR 3.

BY GOVERNMENT PLEADER SMT. R.BINDU

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 21/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J.

C.R.P.No. 937 OF 2005 G

Dated this the 21st August, 2007.

O R D E R

This revision petition is preferred against the order of the learned Additional District Judge in C.M.A.94/2004. The plaintiff is the revision petitioner before the court. He is an Advocate by profession. He has filed a suit against the Government for compensation against the illegal termination of him from the government pleadership post. A detailed order is written by the learned District Judge wherein specific reference is made to the innumerable number of occasions where the suit has been removed from the list on the ground of personal inconvenience or otherwise of the plaintiff. The suit was once dismissed for default and it was restored to file on payment of cost of Rs.250/-. Thereafter petitions were moved on one occasion on account of death of the mother of the plaintiff and ultimately on account of an allegation that the Advocate clerk has wrongly noted the posting date in the docket of the case. The courts below found that neither the docket sheet nor the plaintiff was examined to prove the said fact. So the courts felt that in spite of innumerable number of opportunities the plaintiff did not prosecute the case well and therefore denied him the

opportunity of getting a restoration. It is a settled principle that broad principles of natural justice demands an opportunity of being heard to the party before disposal of the case. It is equally settled that if it is surrounded by gross negligence or misconduct, such indulgence need not be shown. The facts of this case would reveal that on account of the termination of government pleadership the plaintiff has approached this court against the said termination and I am informed that this court has held that it is an illegal termination. So it is for compensation a suit is filed. It is true that the suit was once dismissed for default and restored and adjournments had been given thereafter at the behest of the plaintiff. The conduct of the plaintiff would reveal that he used to move applications for adjournments and except on the last occasion where the case was posted on a Sunday and was called on the next day and then as per the provisions of the Civil Rules of Practice disposed of on that day as dismissed for default. I feel one cannot attribute gross negligence on person. It is true that there are laches. These laches are always curable by directing him to pay costs.

2. The learned Govt. Pleader very strongly opposes the application.

3. I am inclined to allow the application on terms. So far as the jurisdictional aspect is concerned it has to be held that neither the Government nor the petitioner did have any objection when the C.M.A was heard and as per the provisions of Section 21 of the C.P.C it has to be raised at the earliest instance and one cannot complain about the jurisdictional aspect if it ends against him. So, the court below was right in over-ruling that objection. Therefore, the C.R.P is allowed on payment of cost of Rs.5,000/- to be deposited on or before 20.9.2007 before the trial court. If the amount is not deposited within the stipulated time this C.R.P will stand dismissed. If it is deposited the court below is directed to restore the suit to file and dispose of the matter in accordance with law as expeditiously as possible. I make it clear that at least hereafter the plaintiff shall show keen interest and participate and co-operate with the court for a proper disposal of the matter.

M.N.KRISHNAN
Judge

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